U.S. Abatement, Inc. *and* International Association of Heat and Frost Insulators and Abestos Workers, Local Union #8, AFL–CIO. Case 9–CA–25744

June 20, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On July 9, 1990, Administrative Law Judge William A. Pope II issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

[1] We agree with the judge's finding that the Respondent is an employer primarily engaged in the building and construction industry within the meaning of Sec. 8(f) of the Act for the reasons stated by him and we note that his analysis is consistent with Board law. See *Zidell Explorations*, 175 NLRB 887, 888–889 (1969) (wrecking and dismantling operation is properly viewed as in the building and construction industry'' under 8(f).

In adopting the judge's finding that the complaint is not barred by Sec. 10(b), we find it unnecessary to rely on his discussion of *Chemung Contracting Corp*., 291 NLRB 773 (1988), and *Al Bryant, Inc*., 260 NLRB 128 (1982).

[2] The Respondent has excepted to the judge's conclusion that the provisions of the ''National Maintenance Agreement (Revised)'' (NMA) do not apply. The NMA is referenced by the 1986–1989 agreement between Union Local #8 and the Master Insulators Association of Cincinnati Ohio (the Union/Association agreement), which the judge found was binding on the Respondent. The Respondent argues that if it is bound to any agreement with the Union, that agreement must be the NMA. The Charging Party introduced into evidence a January 8, 1987 copy of the NMA, which, however, was not signed by the Respondent. With regard to the Respondent's contractual obligation, we agree with the judge that the Respondent entered into a lawful 8(f) agreement when, on August 24, 1987, it signed the ''Labor Agreement'' binding it to the Union/Association agreement and that the Respondent violated Sec. 8(a)(5) and (1) by repudiating that contract and ceasing to pay wage rates and contributions required by it. Further, We find that the judge properly ordered the Respondent to pay delinquent contributions and to make employees whole for any lost wages. However, in remedying these violations, we find it unnecessary to decide, as a practical matter, whether the Respondent is bound by the provisions of the NMA. In this regard, we note that art. VIII of the NMA provides, in pertinent part, that ''[w]age rates shall be those set forth in the current Labor Agreement of the affiliated Local Union where the work is to be performed . . . .'' Similarly, art. IX provides in pertinent part that ''Welfare Funds, Pension Funds . . . and other monetary funds called for in the Local Union Labor Agreement shall be paid in accordance with the Local Union Labor Agreement . . . .'' It appears beyond serious doubt that the ''current Labor Agreement of the affiliated Local Union'' and the ''Local Union Labor Agreement'' to which these provisions rfer is, in this case, the Union/Association agreement. Thus, as the NMA refers back to the relevant provisions of the Union/Association agreement and impose the latter's wage rates and benefits on signatory employers, the Respondent's obligations under the recommended Order, adopted here, will be defined by the terms of the Union/Association agreement regardless of whether or not it requires the Respondent to be bound by the NMA.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, U.S. Abatement, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

James R. Schwartz, Esq., for the General Counsel.
Roger A. Weber, Esq., of Cincinnati, Ohio, for the Respondent.
Gary M. Eby, Esq., of Cincinnati, Ohio, for the Charging Party.

DECISION

WILLIAM A. POPE II, Administrative Law Judge. In a complaint, dated October 21, 1988, the Regional Director for Region 9 of the National Labor Relations Board (the Board) alleged that the Respondent, U.S. Abatement, Inc., violated Sections 8(a)(1) and (5) and 8(d) of the National Labor Relations Act (the Act) by refusing to pay its employees wages and fringe benefits in accordance with a collective-bargaining agreement with the International Association of Heat and Frost Insulators and Asbestos Workers, Local Union #8, AFL–CIO (the Union), and by refusing to furnish to the Union information necessary for its performance of its functions as exclusive bargaining representative of Respondent's employees constituting a unit appropriate for purposes of collective bargaining. Trial took place before Administrative Law Judge William A. Pope II, in Cincinnati, Ohio, on February 21 and 22, 1989.

Background

U.S. Abatement Inc., is engaged in the business of asbestos abatement.[1] The Company was formed in 1987 by Terry Estes, its president and now chairman, and several partners.[2] Its first asbestos abatement job was in the Cincinnati, Ohio area, in November 1987. Since then the Company has expanded its operations outside of the Cincinnati area.

At the time of the hearing in this case, Terry Estes was 29 years old. He testified that he had an 11th grade education, and had worked as an ironworker from 1977 to 1984, when he went into business for himself and formed J&B Steel, a company engaged in the business of placing reinforcing steel in buildings under construction. He stated that J&B Steel does only union work, and that it has worked with over 12 local unions of the Iron Workers Union. Estes characterized J&B Steel as the sixth top steel contractor in the United States.

[1] U.S. Abatement, according to its president, Terry Estes, also bids on other types of work, such as removing pigeon droppings. Its principal business, however, is the removal and disposal of asbestos used in the structure of buildings or in mechanical systems installed in buildings. Estes characterized the Company's work as 65 percent structural and 35 percent mechanical. Because of the health hazards posed by asbestos, the work is considered to be dangerous, and requires some training in safety procedures.

[2] There is no evidence of record disclosing how the ownership of U.S. Abatement is distributed among Terry Estes and his partners. At the time of the hearing, Estes had been the Company's president for about 1-1/2 years, and its chairman for 30 days.

According to Estes, he decided to go into the asbestos abatement business in June 1987, and discussed the idea of forming an asbestos removal company with his attorney, Gregory Wilson.[3] Wilson directed the preparation of a business plan by an economics professor at Northern Kentucky University, and began making arrangements for obtaining financing and handled the other formative aspects of the company. Estes said that it was his intention from the outset to obtain employees through a union, because, based on his experience with J&B Steel, he thought that a union would have better quality people available and would be a more consistent source.

In May 1987, Estes initiated the first of a series of telephone conversations with Richard T. Black, the business manager of Asbestos Workers Local Union #8, in Cincinnati, Ohio, about Estes interest in getting into asbestos abatement work. The parties agree that during these conversations, Estes sought information about the abatement business, how union contracts worked, the competency of union members, and indicated an interest in signing a union contract.

In June 1987, Estes met with Black at a local restaurant. Also present were Union President Danny Lichtenfeld and Gregory Wilson, Estes' attorney. Black acknowledged in his testimony that Estes said during the meeting that he wanted to get started in asbestos abatement business, and that he was seeking the Union's help. Black said that a big part of the conversation concerned Estes' desire to get a leadperson, a competent person to supervise his operation.

It appears from Black's testimony, that there is no dispute that Estes told Black that he wanted the Union's help in getting started in the asbestos abatement business. Estes asked for information concerning the people the Union could supply. Black told Estes that the Union could furnish competent, certified employees, and that the ratio would be one journeyman (certified) to four abatement workers.[4] According to Black, the term ''competent person'' as used by the Union and contractors in the abatement field meant a certified journeyman. It is clearly inferable from the conversations between Black and Estes that Black knew that Estes intended to hire employees on a project-by-project basis. Estes testified that he was told the ratio would be one mechanic to four abatement-type people, and what the wage rates and fringe benefit rates would be.

Estes admitted signing General Counsel's Exhibit 4 (GC-4), entitled ''Labor Agreement,'' on August 24, 1987,[5] as the authorized representative of Respondent. Business Agent Black signed the same document on August 17, 1987, as the authorized representative of the Union. The text of the two-page document follows:

> In consideration of the benefits to be derived and other good and valuable considerations, the undersigned Employer or successors although not a member of the Master Insulators Association of Cincinnati, Ohio, does hereby join in, adopt, accept and become a party to the current collective bargaining agreement made by the Master Insulators Association of Cincinnati, Ohio and the International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 8, Cincinnati, Ohio. The undersigned also agrees to be bound by any additions, modifications, or subsequent collective bargaining agreements entered into by the Union and the Master Insulators unless the undersigned Employer gives notice to the Union at least 30 days prior to the expiration of the collective bargaining agreement that it no longer intends to be bound by subsequent agreements.
>
> The Employer further accepts all of the provisions of said collective bargaining agreement pertaining to contributions to various Trust Funds providing for Health and Welfare, Pension and Vacation benefits for employees, or any other fringe benefit.
>
> The Employer further agrees to be bound by any Trust Agreement hereinafter entered into between the Association and Local No. 8 and agrees to make contributions as required and authorizes the Association and Local No. 8 to name Trustees to administer said employee Benefit Funds. The undersigned Employer ratifies and accepts such Trustees and the terms and conditions of the Trust as if made by him.
>
> The Union agrees to extend the terms of the collective bargaining agreement made between it and the Master Insulators Association to the undersigned Employer as if he were an original signatory thereto.

It is undisputed that Respondent performed four asbestos abatement jobs in the Cincinnati area between November 1987 and February 20, 1988, utilizing employees referred by the Union on a project-by-project basis.[6] These jobs are variously referred to as the Atlas Bank building (October 1987), Cin-Pac (December 1987), P&G (Proctor & Gamble), and the DeYoung residence (February 1988). Records from various union-management fringe benefit funds show that the Respondents made contributions for the periods from October 28 to November 27, 1987; December 1 to December 31, 1987; and, January 1 to January 31, 1988. Estes testified that Respondent paid fringe benefits for the DeYoung residence job, which was completed by February 20, 1988, ''a month later for that job.''

Expressing dissatisfaction with the quality of employees and availability of employees referred by the Union for Respondent's first four jobs in the Cincinnati area, Estes testified that he ''felt we had not had a contract since February 15.'' He acknowledged that he did not contact Union Business Manager Black to discuss his dissatisfaction.

Following completion of the DeYoung job, Respondent performed a job at the Liberty National Bank in Louisville, Kentucky, and then began a structural asbestos abatement job (which, according to Estes, did not involve asbestos used as thermal insulation) sometime in March 1988 at Emery Industries in the Cincinnati, Ohio area. Terry Estes testified that on this job he employed one supervisor who performed the work of a mechanic,[7] and abatement workers. None of these

[3] It was stipulated that Wilson has acted as counsel for Respondent at times, and sits on Respondent's board of directors.

[4] Black told Estes that a certified journeyman had 32 hours of Environmental Protection Agency approved training in safe methods of asbestos abatement.

[5] Gregory Wilson, Estes' attorney, testified that Estes signed the ''joinder agreements before I knew he was going to.''

[6] The Respondent did not then, and apparently still does not, operate with a stable work force. Instead, Respondent hires employees on a project-by-project basis.

[7] Estes said that this employee performed the same kind of work as performed by John Cox, a mechanic referred by the Union, on the first four Cin-

employees had been obtained through the Union. He acknowledged that the wages which he paid to Respondent's employees on the Emery Industries job were not in accordance with the wage scale required under the collective-bargaining agreement with the Union. Estes also acknowledged that no fringe benefit fund contributions were made to the Union for these employees.[8]

By letter, dated April 4, 1988, Union Business Manager Black requested from Terry Estes of U.S. Abatement, ''a list of abatement workers and abatement specialist [sic] employed by U.S. Abatement Inc. at Emery Industries, Este Ave., Cincti., Ohio, and the wage rate paid to these employees.'' Business Manager Black testified that he did not receive a written reply from Estes, but that he had a conversation with Estes in which Estes indicated that he would like to negate the contract. According to Black, he told Estes that he could not approve the request, but would take it to the Union's executive board.

In a letter to Business Manager Black, dated April 14, 1988, Respondent's vice president, Leslie J. Ungers, acknowledged receipt of Black's letter of April 4, 1988, and said, ''Since you are bringing the recision [sic] matter before your executive committee, don't you think it makes since [sic] to get that issue resolved before involving employees?''

In another letter to Black bearing the same date, Ungers described the status of Respondent's relationship with the Union in the following terms:

> As you and Terry Estes have discussed on several occasions we believe that you have been unable to perform under the contract do [sic] to your failure to provide sufficient adequate trained workers to man our jobs as you agreed to do. You have advised Mr. Estes that you will bring before your executive board voluntary recision [sic] of the contract and we think that this is the most sensible solution to this unfortunate problem.

In a written reply dated April 19, 1988, Black stated that he would tell the Union's executive board of Respondent's desire to cancel the contract, and, referring to his letter of April 4, 1988, repeated his request for ''a list of the people who were employed on the Emery project and their wage rate.''

By letter of May 17, 1988, Gary Eby, the Union's attorney, informed Ungers that ''your request that this collective bargaining agreement with the Union be cancelled is rejected. It is the position of the Local that the agreement is in full force and affect [sic] until its expiration in July, 1989.'' Attorney Eby also stated, ''In order to fairly administer this collective bargaining agreement, the Union reiterates its request for information made by Business Agent Black by the letter dated April 4, 1988 (copy attached).'' It is undisputed that Respondent did not furnish the requested information to the Union.

Estes testified that Respondent has not made any payments to the fringe benefit funds for projects completed by Respondent since the DeYoung residence job in January 1988. He said that since March 1, 1988, Respondent has completed ''probably'' five asbestos abatement jobs in the Cincinnati area,[9] but it has not employed anyone on any of these jobs classified by the Union as a mechanic or apprentice;[10] all the employees have been classified as common laborers or supervisors. Estes acknowledged that laborers employed by Respondent do some of the jobs that asbestos abatement helpers did on the first four jobs. It was stipulated that since March 1, 1988, Respondent has not employed anyone who was a member of the Union or paid dues to the Union, or had any contact with the Union.

Issues

The complaint alleges that since on or about August 24, 1987, the Union has been the recognized collective-bargaining representative of Respondent's employees in classifications set forth in the Asbestos Workers Agreement of 1987, and has been recognized as such by Respondent. The complaint further alleges that since in or about mid-April 1988, the Respondent has refused to abide by the Asbestos Workers Agreement of 1987, and has failed to pay its employees wages and fringe benefit fund contributions in accordance with the collective-bargaining agreement. Finally, the complaint alleges that since on or about April 5, 1988, the Respondent has failed and refused to furnish the Union information requested by the Union relevant to its performance of its functions as the the exclusive collective-bargaining representatives of Respondent's employees classified as abatement workers and abatement specialists. The Respondent, by its acts and conduct, is alleged to have committed unfair labor practices within the meaning of Sections 8(a)(1) and (5) and 8(d) of the Act.

a. *Argument of the General Counsel*. The General Counsel contends that the two-page ''Labor Agreement'' signed by Terry Estes on behalf of Respondent on August 24, 1987, was a binding ''typical 'short form' union contract by means of which an employer assents to the terms of a more complete agreement which is already in existence between a union and an employers' association.'' Here, says the General Counsel, the complete agreement was several documents constituting the ''current'' agreement between the Master Insulators Association of Cincinnati, Ohio, and the Union. Although the Master Insulators Agreement had expired on June 20, 1986, the Union and the Master Insulators Association had agreed to continue to abide by its terms. There was also in effect a ''National Maintenance Agreement,'' which was referred to in the Master Insulators Agreement, which had no expiration date. Thus, concludes the General Counsel, the Respondent was bound by a ''full and complete collective- bargaining agreement.'' But, the General Counsel argues further, even if neither of the two written agreements were applicable to Respondent, the two-page ''Labor Agreement'' signed by the Respondent contained agreement on sufficient terms of employment to constitute a contract. The contract between the Union and the Respondent is said to be

cinnati jobs. Estes testified that he paid the supervisor on the Emery Industries job $15 per hour (less than the collective-bargaining wage for mechanics), and that no fringe benefits were paid.

[8] Estes testified that he made other wage changes after the Emery Industries job, but that he made no attempt to negotiate the wage rates with the Union.

[9] All were mechanical jobs, involving hot or cold insulation materials on pipes, fittings, or valves on boilers, and on ducts, flues, tanks, or vats. Elsewhere in his testimony, Estes said that Respondent had completed 9 to 12 asbestos abatement jobs in the Cincinnati area since the DeYoung resident job in January 1988.

[10] Estes testified that since March 1, 1988, Respondent has not employed anyone who has completed a mechanic's exam after 5 years in the trade, or anyone who is in an apprentice category.

enforceable under Section 8(a)(5) as a prehire agreement under Section 8(f).

The General Counsel argues that Respondent has admitted that it unilaterally repudiated its collective-bargaining agreement with the Union, as of late February 1988. But, continues the General Counsel's argument, the violation was a ''continuing violation,'' of which the Union only became aware within 6 months of the filing of the charge on September 6, 1988. The complaint is not barred by Section 10(b) of the Act. Even if the 10(b) limitation is applicable, each violation of the Act is a separate violation, and all violations since March 6, 1988, are within the 6-month period.

The information sought by the Union in its letter of April 4, 1988, ''requesting a list of abatement workers and abatement specialist [sic] employed by U.S. Abatement, Inc. at Emery Industries . . . and the wage rate paid to these employees,'' was ''information needed by the Union to make a determination whether Respondent had in fact violated or repudiated the contract.'' The refusal of Respondent to furnish the information violated the Act.

b. *Argument of the Charging Party*. The Charging Party, in substance, joins with that there was created an enforceable 8(f) prehire agreement between the Respondent and the Union, which the Respondent, without notice or good cause, unilaterally breached. The letters sent by the Union to the Respondent on April 4 and 19, May 17, and August 12, 1988, requesting information concerning the names of employees and wage rates paid, were clearly requests for information essential to the Union's enforcement of the agreement and its representational status concerning employees. The Respondent's refusal to furnish the information violated the Act. The Charging Party ''makes no claim'' concerning jobs or wage rates paid outside the territorial scope of the Union's labor agreement, specifically, a job at the Liberty Bank in Louisville, Kentucky. The Charging Party concedes that since the labor agreement contains no exclusive hiring hall provision, the Union makes no claim that unilateral solicitation of employees by the Respondent violated the Act.

c. *Argument of the Respondent*. Respondent argues that the General Counsel has failed to meet its burden of proving the allegations of the complaint by a preponderance of the evidence. Respondent acknowledges that on August 27, 1987, it signed a 1-1/4 page document entitled ''Labor Agreement.'' The abrogation of the ''real'' agreement was by the Union, however, and not by the Respondent. The Union failed to meet its promise of providing a ''ready supply of good, qualified asbestos removal employees.'' The Respondent had promised, without any obligation to do so, to pay the wages and provide the benefits of the Union's associational contract, ''in exchange for the Union's pledge of all the ready, trained, qualified, capable people USA would want and need to grow its business rapidly and successfully as targeted.'' Contrary to its promise, however, ''it had not provided and could not provide the quality people when and as needed by USA.''

Respondent further argues that Section 8(f) is inapplicable to it, because it is not ''engaged primarily in the building and construction industry.'' Respondent reasons that it is primarily engaged in maintenance-type work, which is not the same as construction work.

Respondent factually distinguishes this case from *John Deklewa & Sons*, 282 NLRB 1375 (1987), by raising the argument that here, unlike in *Deklewa*, there was a bilateral abrogation of the ''real agreement.''

Further, the Respondent argues that the charge in this case was untimely. The Respondent says that it gave ''rather public notice'' of its repudiation of the agreement on February 17–18, 1988. Therefore, each subsequent failure to pay fringe benefits was not ''a separate, new violation,'' but the result of the repudiation.

The Respondent advances several alternative arguments. Respondent says that the bargaining agreement was not, in any event, enforceable, because ''it is indefinite or vague as applied to asbestos abatement.'' Further, Respondent contends that the Emery job, which was the subject of the Union's April 4, 1988 letter, was not ''for the purpose of thermal control,'' and, therefore, fell outside the scope of the alleged collective-bargaining agreement, the work jurisdiction of which extended only to removal of ''cold or hot thermal insulation'' and ''for the purpose of thermal control.'' Extending this argument, the Respondent alleges that 65 percent of its asbestos removal work does not involve asbestos used as thermal insulation. And, Respondent argues that the unfair labor practices did not affect commerce, as required under Sections 10(a) and 8(f). The Respondent concludes by arguing that the alleged agreement was voidable because of material misrepresentations by the Union, and that the General Counsel failed to establish an enforceable written agreement to pay fringe benefit fund contributions.

FINDINGS AND CONCLUSIONS

I.

In its answer, filed on November 4, 1988, Respondent stated:

> 2(c) In response to paragraph 2(c) of the Complaint,[11] Respondent admits that it is now, but denies that it ''has been at all material times herein,'' an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The general jurisdiction of the Board extends to ''labor disputes'' affecting interstate commerce.'' Whether practices ''affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board.'' *NLRB v. Reliance Fuel Oil Corp*., 371 U.S. 224, 226 (1963). On the other hand, the Board's jurisdiction ''must appear from the record; it cannot be presumed.'' *NLRB v. Peninsula Assn. for Retarded Children & Adults*, 627 F.2d 202 (9th Cir. 1980).

The issue of jurisdiction was not litigated, as such, at the hearing in this case; however, there was testimony that indicated that from the outset Respondent intended to perform jobs in areas remote from Cincinnati, Ohio. Terry Estes, Respondent's president and chairman, stated that when he decided to go into the asbestos abatement business in June 1967, he intended to ''start in Cincinnati, Ohio, build a core of people, and go out from there.'' Gregory Wilson, Respondent's attorney, testified that at the restaurant meeting in June 1987, attended by Richard T. Black, Asbestos Workers

[11] 2(c) Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

Local #8's business manager, and other union officials, he explained that Estes' other business, J&B Steel, operated in a 300-mile radius, as far away as Kansas City, Missouri, and St. Louis, Missouri, because he wanted to make sure that Business Manager Black and Union President Lichtenfeld ''understood that there was a need to provide manpower in remote areas as well as our local area.''

The first four jobs performed by Respondent took place in the Cincinnati, Ohio area. Consistent with its plan, Respondent expanded its area of operations, and its next job in February 1988 wag in Louisville, Kentucky.

On this evidence, I find that it was Respondent's intent from the outset to operate its asbestos removal business in interstate commerce, and that by February 1988, when it took a job in Louisville, Kentucky, there can be no question but that it was engaged in interstate commerce. Therefore, I find that at all times material to this case, Respondent was an employer engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

II.

When Terry Estes and several associates decided to go into the asbestos removal business in 1987, under the name of U.S. Abatement, Inc., starting out in the Cincinnati, Ohio area, Estes, who was the principal organizer of Respondent, relying on his prior experience with unions, both as a member and employer, decided to operate his business with employees to be obtained through a union. To that end, he contacted Richard T. Black, the business manager of Asbestos Workers Local #8, and in a series of telephone calls and meetings, advised Black of his need for employees and his desire to obtain them through the Union. Black presented Estes with a collective-bargaining agreement, entitled ''Labor Agreement,'' to sign, and in August 1987, Estes and Black signed it for the Respondent and the Union, respectively. Between November 1987 and February 1988, Respondent performed four asbestos removal contracts in the Cincinnati, Ohio area, using employees referred by the Union on a project-by-project basis, and paid wages and fringe benefits as required under the Labor Agreement with the Union. After March 1, 1988, Respondent unilaterally stopped paying wages and fringe benefit payments into the Union's trust funds, as specified by the Labor Agreement and other agreements incorporated by reference.

The parties have stipulated that the Labor Agreement signed by the Union and the Respondent in August 1987 can be binding upon the Respondent only if it is a valid contract under Section 8(f) of the Act. Section 8(f) of the Act provides, in part:

> It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members . . . because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area . . . .

In *John Deklewa & Sons*, 282 NLRB 1375, 1377–1378 (1987), the Board stated that it would apply the following principles in 8(f) cases:

> (1) a collective-bargaining agreement permitted by Section 8(f) shall be enforceable through the mechanisms of Section 8(a)(5) and Section 8(b)(3); (2) such agreements will not bar the processing of valid petitions filed pursuant to Section 9(c) and Section 9(e); (3) in processing such petitions, the appropriate unit normally will be the single employer's employees covered by the agreement; and (4) upon the expiration of such agreements, the signatory union will enjoy no presumption of majority status, and either party may repudiate the 8(f) bargaining relationship . . . .

The Board, at 282 NLRB 1355–1356, in discussing the principles it had adopted, said,

> When parties enter into an 8(f) agreement, they will be required, by virtue of Section 8(a)(5) and Section 8(b)(3), to comply with that agreement unless the employees vote, in a Board-conducted election, to reject (decertify) or change their bargaining representative. Neither employers nor unions who are party to 8(f) agreements will be free unilaterally to repudiate such agreements.
>
> . . . .
>
> Even absent an election, upon the contract's expiration, the signatory union will enjoy no majority presumption and either party may repudiate the 8(f) relationship.

Counsel for the General Counsel, in his posthearing brief, quotes from ''a joint U.S. Department of Commerce and U.S. Department of Labor 'Construction Review,''' which gives the following overall definition of construction:

> Construction covers the erection, maintenance, and repair (including replacement of integral parts), of immobile structures and utilities, together with service facilities which become integral parts of structure and are essential to their use for any general purpose. . . . Construction covers those types of immobile equipment which, when installed, become integral part of the structure and are necessary to any general use of the structure. This includes such service facilities as plumbing, heating, air-conditioning and lighting equipment, elevators, and escalators . . . .

The Charging Party defines the term ''construction industry,'' as used in Section 8(f), by drawing an analogy to ''construction industry,'' as used in Section 8(e) of the Act, which says that ''nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of construction, alteration, painting, or repair of a building, structure, or other work.'' The determining factor, according to the Charging Party, is whether the work is done at the jobsite. Since asbestos removal can be done only at the jobsite, and is prefatory to reinsulation of the building or system, the Charging Party argues that asbestos removal, just as is insulation installation, is ''construction work.''

In arguing that Respondent is not primarily engaged in the building and construction industry, Respondent, in its posthearing brief, gives the following description of its business activities:

> USA mops and cleans an area in preparation; creates temporary air containment barriers as needed; wets and then removes friable asbestos—or possibly other debris, such as pigeon droppings; bags the debris; loads it into wagons or dumpsters; trucks it away; and disposes of it at an EPA approved hazardous waste site. It is not in the business of insulating or reinsulating.

Respondent contends that the definitive source for classification of industry is the Government's *Standard Industrial Classification Manual* (1987). Respondent points out that its business is not in Division C of the Manual, which covers the building and construction industry. The Respondent reasons that since the applying of building insulation is listed in Division C, but removal is not, and Respondent does not apply insulation or reinsulate, it is not engaged in the construction and building industry. It is engaged in ''building cleaning and maintenance activities [which] are included in the non-construction Major Group 73 (Business Services).''

Terry Estes, Respondent's president and chairman, described asbestos removal as its main line of business. According to Estes, there are two types of asbestos removal jobs: structural and mechanical. He described a mechanical job as containing, or encapsulating, a mechanical system, such as a boiler, then removing and disposing of asbestos used for hot or cold insulation. Estes said that Respondent removes asbestos from pipes, fittings, valves, boilers, ducts, flues, tanks, and vats. Structural work involves removal of asbestos used for fireproofing and acoustical soundproofing on building walls, beams, and ceilings. Estes described Respondent's work as 65 percent structural and 35 percent mechanical. Estes said that Respondent does not do any reinsulation work.

It is evident that the asbestos removal activities in which Respondent is engaged affect the structure of buildings and equipment, such as boilers and pipes, which, after installation, have become an integral part of the structure, itself. Asbestos removal involves the alteration and repair of buildings and permanently attached fixtures and equipment. It is readily distinguishable from building maintenance and removal of waste. Respondent appears to concede that installation of insulation or reinsulation are building and construction industry activities. Logically, it follows that removal of one type of insulation, for which another type of insulation is to be substituted, is a necessary part of the overall insulation installation or reinsulation process. One essential part of the process is just as much a part of the construction industry as is the other. For purposes of the definition of the building and construction industry, as used in Section 8(f), removal and substitution are but two halves of the whole.

Accordingly, I find that Respondent is an employer primarily engaged in the building and construction industry. Since it entered into its contractual relationship with the Union at a time when the Union's majority status had not been established, the relationship is governed by Section 8(f) of the Act. *B.F.C. Corp*., 285 NLRB 583 (1987); *Jack Welsh Co*., 284 NLRB 378 (1987). An agreement permitted by Section 8(f) may not be unilaterally repudiated during its term, and violation of the terms of the collective-bargaining agreement entered into by the Respondent and the Union is an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act. *B.F.C. Corp*., supra; *American Thoro-Clean*, 283 NLRB 1107 (1987).

III.

The ''Labor Agreement'' signed by the Union and Respondent in August 1987 incorporates by reference, and makes binding upon Respondent, the terms of the ''current collective bargaining agreement made by the Master Insulators Association of Cincinnati, Ohio, and the International Association of Heat and Frost Insulators and Asbestos Workers, Local No. #8, Cincinnati, Ohio,'' and any additions, modifications, or subsequent agreements entered into by those two parties.[12]

The current collective-bargaining agreement between the Master Insulators Association and Asbestos Workers Local #8, at the time the Respondent and Asbestos Workers Local #8 entered into their ''Labor Agreement,'' was the ''Asbestos Workers' Agreement'' which covered the period from July 1, 1987, to July 1, 1989. It was the successor collective-bargaining agreement to the collective-bargaining agreement between the Association and the Union covering the period from June 21, 1985, to June 10, 1986.[13] Although there was no provision in the 1985–1986 Asbestos Workers' Agreement continuing it in force past its expiration date, the parties had agreed to continue operating in accordance with its terms and conditions after the expiration date. Charging Party's Exhibit CP-2, a letter dated March 11, 1987, signed by representatives of both parties, informed the International Association of Heat & Frost Insulators & Asbestos Workers that they were continuing to operate under the terms of the expired agreements for the purpose of establishing ''wages and conditions for Local #8 jurisdiction.'' The only substantive changes in the 1987–1989 Asbestos Workers' Agree-

[12] Under *Deklewa*, supra, the provisions of a master agreement made binding on Respondent by the signed Labor Agreement may be enforced under Sec. 8(a)(5) and (1). *W. B. Skinner, Inc*., 283 NLRB 989 (1987).

[13] By a document entitled ''Asbestos Workers' Agreement,'' signed on July 14, 1987, the Master Insulators Association and Asbestos Workers Local #8 agreed upon and adopted changes to the Asbestos Workers' Agreement. One of the changes agreed upon and adopted was ''Article I to read effective July 1, 1987 expiration on July 1, 1989.'' Clearly, the changes were to the Asbestos workers' Agreement of June 21, 1985, to June 10, 1986, and had the effect of renewing the agreement, with the modifications and changes specified, for the period from July 1, 1987, to July 1, 1989.

ment concerned the wage rates and fringe benefit rates for mechanics and apprentices.[14]

The Asbestos Workers' Agreement recognizes the Union as the exclusive collective-bargaining agent for mechanics and apprentices working within a specified geographical area when they are engaged in, among other things, removing ''cold or hot thermal insulation.''[15] Article XXII of the Agreement states:

> All asbestos removal shall be performed under the terms of the National Maintenance Agreement. It is further agreed that the mechanic-apprentice ratio[16] for asbestos removal work shall be as follows: for each mechanic employed on asbestos removal work the contractor shall be entitled to employ four Asbestos Abatement people at the first year apprentice rate.

The only evidence of record concerning a ''National Maintenance Agreement'' is found in Charging Party's Exhibit CP-10, consisting of a letter from the International Association of Heat and Frost Insulators to Jack Barth, Performance Contracting, Inc., of Shawnee Mission, Kansas, dated January 8, 1987, to which is attached a signed copy of a document entitled, ''National Maintenance Agreement (Revised).'' The ''National Maintenance Agreement (Revised)'' states that it is an agreement entered into on December 1, 1986, between Performance Contracting, Inc., and the International Association of Heat and Frost Insulators and Asbestos Workers. The agreement appears to bear the signatures of the International Association's president and J. M. Barth, manager, industrial relations, Performance Contracting, Inc.

It is apparent, and I so find, that the Master Insulators Association and the Union, by their written agreement on July 14, 1987, renewed the expired 1985–1986 Asbestos Workers' Agreement, and agreed that the new agreement would be effective from July 1, 1987, to July 1, 1989, with the modifications and changes reflected in the July 14, 1987, agreement. The 1985–1986 Asbestos Workers' Agreement, as modified and changed on July 14, 1987, and renewed for the period from July 1, 1987, to July 1, 1989, wag the ''current collective bargaining agreement'' between the Master Insulators Association and the Union in existence in August 1987, when the Respondent and the Union entered in their ''Labor Agreement'' incorporating by reference the ''current collective bargaining agreement'' made by the Master Insulators Association and the Union. The terms and conditions of the Asbestos Workers' Agreement are, therefore, binding upon the Respondent.[17]

Not enforceable against the Respondent, however, are the terms and conditions of the ''National Maintenance Agreement (Revised),'' admitted into evidence as Charging Party's Exhibit CP-10. The reference to a ''National Maintenance Agreement'' in article XXII of the Asbestos Workers' Agreement is vague and indefinite. The ''National Maintenance Agreement (Revised)'' which was introduced into evidence is not a contract between the Master Insulators Association and either the Union or the International Association of Heat and Frost Insulators and Asbestos Workers. Since it is not possible to ascertain from the Asbestos Workers' Agreement, itself, what the parties were referring to by use of the term, ''National Maintenance Agreement,''[18] the Respondent cannot be held to the terms and conditions of the ''National Maintenance Agreement (Revised), even if through a private understanding the Union and the Master Insulators Association agreed that it was the document referred to in the Asbestos Workers' Agreement.

By its terms, the Asbestos Workers' Agreement, effective July 1, 1987, which was the ''current collective bargaining agreement'' between the Master Insulators Association and the Union at the time the Respondent and the Union entered into a collective-bargaining agreement incorporating it by reference in August 1987, expired on July 1, 1989. This contractual relationship between the Respondent and the Union is governed by Section 8(f) of the Act, and is not subject to unilateral repudiation. *W. L. Miller Co*., 284 NLRB 1180, 1181 (1987). However, as the Union did not enjoy a presumption of majority status following the contract's expiration on July 1, 1989, at that point Respondent was free to repudiate the 8(f) bargaining relationship. *John Deklewa & Sons*, supra; *W. L. Miller Co*., supra; *Ken Hash Construction*, 283 NLRB 822 (1987). Accordingly, I find that the Labor Agreement which Respondent signed on August 24, 1987, was binding upon Respondent under Section 8(f) until July 1, 1989, when it expired, and in accordance with Respondent's earlier expression of intent, Respondent's repudiation could first take effect.

[14] The hourly wage rate for mechanics is $18.72, effective July 1, 1987, and $19.12, effective July 1, 1988. These wage rates represented an increase from an hourly wage rate of $18.32 for mechanics under the 1985–1986 agreement. The hourly wage rate for first year apprentices is $7; the hourly wage rate for asbestos abatement [workers] is the same as the hourly wage rate for first year apprentices. The hourly wage rates of apprentices and asbestos abatement [workers] are unchanged from the 1985–1986 agreement to the 1987–1989 agreement.

[15] The work covered by the Asbestos Workers' Agreement includes ''the preparation, fabrication, alterations, application, erection, assembling, molding, spraying, pouring, mixing, hanging, adjusting, repairing, dismantling, removing, reconditioning, maintenance, finishing and/or weather proofing of cold or hot thermal insulation with such materials as may be specified when these materials are to be installed for thermal purposes in voids, or to create voids, or on either piping, fittings, valves, boilers, ducts, flues, tanks, vats, equipment, or on any hot or cold surfaces for the purpose of thermal control. This is also to include all labor connected with the handling and distribution of thermal insulating materials on job premises, scaffolding up to 14 feet high erected by the insulation contractor, and other work that is within the jurisdiction of 'Local No. 8, Cincinnati, Ohio.'''

[16] Art. X provides that ''[a]pprentices shall equal but not exceed a ratio of one (1) apprentice to four (4) mechanics in a shop.''

[17] It is no defense to enforcement of the terms and conditions of the Asbestos Worker's Agreement effective from July 1, 1987, to July 1, 1989, that Respondent's officers and representatives did not take the trouble to ask for a copy of the Asbestos Workers' Agreement, and read it, before signing the ''Labor Agreement'' which incorporated by reference the terms and conditions of the Asbestos Workers' Agreement.

[18] Curiously, the ''National Maintenance Agreement,'' admitted into evidence as C.P. Exh. CP-10, unlike the Asbestos Workers' Agreement into which the General Counsel and the Charging Party argue it is incorporated by reference, contains a union-security clause which requires that ''All employees hired by the contractor shall, as a condition of employment, become and remain members in good standing of the Union within thirty (30) days following the date of their employment.'' Another clause of the ''National Maintenance Agreement'' could, depending on the ''hiring practices in the territory where the work is being performed or is to be performed,'' limit an employer to seeking employees through the Union before looking elsewhere. These conditions appear to be somewhat inconsistent with the positions taken by both the General Counsel and the Charging Party that the Respondent was free to seek employees through any source it chose.

IV.

Respondent does not dispute that it performed asbestos abatement jobs in the Cincinnati, Ohio area, after March 1, 1988, and that on these jobs it employed persons who performed at least some of the same type of duties as did mechanics and abatement workers referred by the Union for earlier jobs. Respondent admits that it did not pay these workers at the wage rates required under its Labor Agreement with the Union, and that it did not make payments for these workers into the Union's fringe benefit funds.

The next asbestos abatement job performed by Respondent after it completed the DeYoung residence job in Cincinnati, Ohio, in February 1988, was the Liberty Bank building in Louisville, Kentucky, which the Charging Party concedes was outside the territorial scope of the Labor Agreement with the Union. The next asbestos abatement job performed by Respondent in the Cincinnati area was the Emery Industries job between March 1 and April 1, 1988. According to Terry Estes, he employed one person on this job who performed the work of a mechanic, and did work similar to that performed by John Cox, a mechanic referred by the Union who had worked on some or all of Respondent's first four jobs. Estes stated that he also employed abatement workers and common laborers on the job, and acknowledged that he did not pay the collective bargaining agreement wage rates or pay any fringe benefits.

According to Estes, the Emery Industries job was structural, but did not involve asbestos used for thermal insulation.[19] Estes testified that after February 20, 1988, his company performed ''probably five'' asbestos removal jobs in the Cincinnati area involving hot or cold insulation materials. Estes stated that some of the work after February 20 involved hot or cold thermal insulation on pipes, fittings, valves, boilers, ducts, flues, tanks, or vats.[20]

Respondent disputes that the ''work jurisdiction'' article (III) of the collective-bargaining agreement extended to the Emery Industries job. Respondent contends that the bargaining unit work covers only removal of ''cold or hot thermal insulation . . . for the purpose of thermal control,'' and that no such work was involved in the Emery Industries job. Overall, asserts the Respondent, ''about 65% of USA's asbestos removal work does not involve asbestos used as thermal insulation. Rather it involves asbestos used for such purposes as acoustics, looks, and fireproofing.''

The complaint alleges that at all times since mid-April 1988, Respondent has refused to abide by the collective-bargaining agreement by failing to pay its employees wages and fringe benefits fund contributions in accordance with the agreement. The complaint does not make specific reference to any particular job performed by Respondent.

As previously noted, the work covered by Asbestos Workers' Agreement, which is incorporated by reference in the Labor Agreement signed by Respondent, includes the:

> repairing, dismantling, removing, reconditioning, maintenance, finishing and/or weather proofing of cold or hot thermal insulation with such materials as may be specified when these materials are to be installed for thermal purposes in voids, or to create voids, or on either piping, fittings, valves, boilers, ducts, flues, tanks, vats, equipment or on any hot or cold surfaces for the purpose of thermal control.

Although the work jurisdiction clause is less than concise, nevertheless, it is clear from its language that the bargaining unit work, insofar as removal of asbestos is concerned, includes removal of asbestos installed for thermal control purposes in voids or to create voids or on any hot or cold surfaces for the purpose of thermal control. As Respondent contends, removal of asbestos installed for acoustical purposes, looks, or fireproofing is not bargaining unit work.

While some of the asbestos removal work performed by Respondent in the Cincinnati area after February 20, 1988, may have been related to asbestos used for purposes other than as thermal control, and therefore may not be bargaining unit work, by Terry Estes' own admission, some of the asbestos removal work done by Respondent in the Cincinnati area since February 20, 1988, involved the removal of asbestos installed on mechanical systems for purposes of thermal control. That work clearly was bargaining unit work falling under Respondent's collective-bargaining agreement with the unit.[21]

The 1987–1989 8(f) collective-bargaining agreement between Respondent and the Union requires it to make benefit fund contributions and pay wage rates established by the collective-bargaining agreement for bargaining unit work. Here, Respondent has admitted that it unilaterally stopped making contractually required contributions to the Union's fringe benefit funds on behalf of bargaining unit employees, and stopped paying contractual wage rates to employees performing bargaining unit work, all during the period alleged in the complaint. In substance, Respondent has admitted that it unilaterally repudiated the 1987–1989 collective-bargaining agreement. An 8(f) agreement may not be unilaterally repudiated during its term, and the provisions of the agreement may be enforced under Section 8(a)(5) and (1). Accordingly, I find that Respondent has violated Section 8(a)(5) and (1), as alleged.

The other defenses asserted by Respondent to the allegation that it violated Section 8(a)(5) and (1) are without merit.

The evidence of record does not establish Respondent's contention that it was the Union which abrogated the collective-bargaining agreement. There is no evidence that the Union failed to provide qualified workmen to the Respondent as requested in connection with Respondent's first four jobs. While Respondent professes dissatisfaction with the availability and qualifications of some of the workmen referred by the Union, the Union ultimately was able to satisfy Respondent's needs and Respondent completed the jobs successfully. In any event, the Union does not operate a hiring hall, and did not represent to Respondent that it did, and Respondent was free to obtain employees from any source he chose. There is nothing in the collective-bargaining agreement

[19] When asked to describe the Emery Industries job, and the purpose of the asbestos, Estes said it was a structural job involving a trough that caught drippings from pipes so that the drippings would not go through or melt a pan, or rot out or rust its bottom.

[20] Estes said that in the Cincinnati area Respondent's work since the Emery Industries job was 50 percent structural and 50 percent mechanical. He said that 95 percent of the mechanical work involved taking asbestos off boilers and the pipe work associated with boilers. The big job, according to Estes, was the Hughes School, which involved a boiler.

[21] The Hughes School job is the only one performed by Respondent which can be identified by name from the record as bargaining unit work. It is unclear from the record when Respondent performed that job.

which makes the Union the sole source of employees for Respondent. There was no material misrepresentation by the Union. Respondent sought employees from the Union on a job-by-job basis. Respondent could not reasonably have believed that there was a pool of unemployed qualified workers available at its beck and call, nor could Respondent reasonably have believed that qualified workers already employed would be willing to quit their employment and go to work for Respondent for one job of short duration. Under the facts of this case, I find that the Union substantially met its contractual obligations to Respondent. Respondent's election to seek employees elsewhere was one of choice, not necessity, and did not relieve it of its obligation to comply with the terms of the collective-bargaining agreement. The abrogation of its contractual obligations by Respondent was unilateral and without good cause. There was no bilateral abrogation of the agreement.

The fact that Respondent may not have hired ''Mechanics or Apprentices,'' in the sense of individuals who had completed a 5-year union apprenticeship and had passed a union mechanic examination or were enrolled in a union apprenticeship program, does not relieve Respondent of its contractual obligations under the collective-bargaining agreement. Employees who do bargaining unit work are covered by the collective-bargaining agreement, regardless of their title. It is the work an employee does, and not the title he uses, which determines whether he is a member of the bargaining unit. Here, Respondent admits that it employed people who performed the same functions as ''mechanics'' and ''abatement workers,'' both of which are categories of employees making up the bargaining unit under the collective-bargaining agreement. It is immaterial whether Respondent called them supervisors or common laborers, or by any other title.

V.

Union Business Manager Black testified that he sent his April 4, 1988 letter to the Respondent, requesting a list of abatement workers and abatement specialists employed by Respondent at the Emery Industries jobsite, and the wage rates paid to them, after he was informed by a union member that Respondent was working on the Emery Industries job. According to Black, he wanted the information to determine if the Respondent was paying benefits for these employees. Black acknowledged that at the time he knew or felt that the Union was not receiving benefit fund contributions from the Respondent.

There is no dispute that Respondent has not provided the requested information to the Union.

It is well established that an employer must provide to a union, on request, information ''relevant in carrying out its statutory responsibilities.'' *NLRB v. Acme Industrial Co*., 385 U.S. 432, 437 (1967). In *W. L. Molding Co*., 272 NLRB 1239, 1240 (1984), the Board summarized the applicable law:

> [A] broad discovery-type standard is applicable to requests for information relevant to a union's functions of negotiating and policing compliance with a collective-bargaining agreement. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 437 (1967); *General Motors v. NLRB*, 700 F.2d 1083, 1088 (6th Cir. 1983); *NLRB v. Rockwell-Standard Corp*., 410 F.2d 953, 957 (6th Cir. 1969). ''[I]t is not the Board's function in this type case to pass on the merits of the Union's claim that Respondent breached the collective-bargaining agreement or . . . committed an unfair labor practice.'' *NLRB v. Rockwell-Standard Corp*., 410 F.2d at 957. ''Thus, the union need not demonstrate actual instances of contractual violations before the employer must supply information.'' *Boyers Construction Co*., 267 NLRB 227, 229 (1983). ''Nor must the bargaining agent show that the information which triggered its request is accurate, nonhearsay, or even ultimately reliable.'' *Ibid*. ''The Board's only function in such situation is in 'acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.''' *NLRB v. Rockwell-Standard Corp*., 410 F.2d at 957, quoting *NLRB v. Acme Industrial Co*., 385 U.S. at 437. Accord: *General Motors v. NLRB*, 700 F.2d at 1088. [Footnote ommitted.]

Information pertaining to wages, hours, and working conditions of bargaining unit employees is presumptively relevant. *Western Massachusetts Electric Co. v. NLRB*, 573 F.2d 101 (1st Cir. 1978), enfg. 228 NLRB 607 (1977); *San Diego Newspaper Guild. v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1979); *Telepromter Corp. v. NLRB*, 570 F.2d 418 (1st Cir. 1977); *Procter & Gamble Mfg. Co. v. NLRB*, 603 F.2d 1310, 1315 (8th Cir. 1979). The burden is on the Respondent to establish that presumptively relevant wage and benefit information is not relevant. *NLRB v. Borden, Inc*., 600 F.2d 313, 317 (1st Cir. 1979), enfg. in pertinent part 235 NLRB 982 (1978); *San Diego Newspaper Guild v. NLRB*, supra.

The Union has met its initial burden of showing relevance. It had information that the Respondent was performing an asbestos abatement job, for which it was not making benefit fund contributions, as required under the collective-bargaining agreement. The information sought by the Union in this case is relevant to whether or not any work being performed by Respondent's employees at the Emery Industries job was bargaining unit work under Respondent's collective-bargaining agreement with the Union. The Union need not demonstrate that the collective-bargaining agreement had been violated before it is entitled to the information which it requested. Under ''a liberal discovery-type standard,'' it need only show, as it has done, that the requested information has ''some bearing'' on whether the Respondent was complying with its contractual obligations.

Accordingly, I find that the Union is entitled to receive the information it requested in its letter of April 4, 1988, to the Respondent, and that by its refusal to supply that information, Respondent violated Section 8(a)(5) and (1) of the Act.

VI.

Respondent argues that the charge was untimely because it was not filed until September 6, 1988, more than 6 months after the Respondent ''repudiated whatever agreement there was and gave rather public notice'' of the repudiation. I find that argument unpersuasive.

Section 10(b) of the Act provides that ''no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the

Board and the service of a copy thereof upon the person against whom such charge is made.''

The charge in this case was received by the Board on September 6, 1988. Respondent does not deny that it wag served with a copy. The 10(b) period, therefore, began 6 months earlier, on March 6, 1988. Respondent contends that by reason of an employment advertisement for insulation workers, at $15 per hour with a minimum of 2 years' experience, and common laborers, at $10 per hour, which it placed in the Cincinnati Enquirer (a Cincinnati, Ohio newspaper), on February 17 and 18, 1988, it gave notice to the Union that it had repudiated the collective-bargaining agreement. Respondent contends that its Respondent's Exhibit R-6, which is a letter from Dick Black, the Union's business manager, to U.S. Abatement, Inc., attention Terry Estes, dated February 19, 1988, shows that the Union knew that the Respondent had repudiated the collective-bargaining agreement, because in the letter, Black noted that the advertisement did not reflect the wage scale for asbestos workers under the signed bargaining agreement, and told the Respondent that ''anyone employed by U.S. Abatement Inc. doing work that is listed in Article 3 of the Agreement shall receive pay and compensation as stated in the Asbestos Workers Agreement.''

The Board has held that the 6-month limitation period is tolled where the unlawful conduct is of a continuing nature. In *Al Bryant, Inc*., 260 NLRB 128 (1982), the Board held that abnegation of a collective-bargaining agreement is a continuing violation under Section 10(b). The Board has held that each failure during the term of an existing collective-bargaining agreement to pay contractually required periodic benefit fund payments is a separate and distinct violation of an employer's bargaining obligation. *Chemung Contracting Corp*., 291 NLRB 773 (1988), citing *Farmingdale Iron Works*, 249 NLRB 98 (1980), enfd. mem. 661 F.2d 910 (2d Cir. 1981). The Board has also held that the 6-month limitation period may be tolled where the charging party does not have actual or constructive knowledge of the unfair labor practice. *Metromedia, Inc.-KMBC-TV*, 232 NLRB 486 (1977).

The newspaper want ad placed by the Respondent was neither actual nor constructive notice to the Union that Respondent had abrogated the collective-bargaining agreement with the Union. The Union responded to the advertisement by reminding the Respondent of its obligations, as the Union saw them, under the collective-bargaining agreement. There is no evidence that the Union knew that the Respondent had actually hired workers for jobs covered by the collective-bargaining agreement at wages other than specified in the agreement. As all parties agree, the Respondent had no obligation under the collective-bargaining agreement to seek employees only through the Union, or, for that matter, to even consult the Union before looking elsewhere for employees; the Union admittedly did not operate a hiring hall, and there is nothing in the Asbestos Workers' Agreement which requires an employer to request the Union to supply employees. Under these conditions, more than a newspaper want ad offering wages possibly at odds with the collective-bargaining agreement is required before it can be said that the Union had either actual or constructive knowledge that Respondent had abrogated or abnegated the collective-bargaining agreement.

While it appears that Terry Estes indicated to Richard Black, on one or more occasions prior to April 14, 1988, that Respondent wanted a voluntary rescission of the collective-bargaining agreement, it is evident from Respondent's April 14, 1988 letter, signed by Leslie J. Ungers, Respondent's vice president, addressed to Black, that Respondent did not consider the matter to have been settled as of that time. Referring to Black's agreement to bring the matter of a voluntary rescission of the contract before the Union's executive board, Ungers stated: ''It is really ashame that this has not been working out and I hope that we can bring this matter to a speedy conclusion for the best interest of all.''

I find, therefore, that as late as April 14, 1988, which is well within the 6-month limitation period, the Union had neither actual nor constructive knowledge that Respondent had renounced the collective-bargaining agreement and was no longer complying with its terms and conditions. Since the Union did not have actual or constructive notice of violations of the Act by Respondent as of April 14, 1988, it is unnecessary to consider whether the alleged violations were continuing in nature. *J. P. Sturrus Corp*., 288 NLRB 868 (1988). Accordingly, the charge in this case was not untimely under Section 10(b) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, U.S. Abatement, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, Asbestos Workers Local Union #8, is a labor organization within the meaning of Section 2(5) of the Act.

3. A collective-bargaining agreement existed between U.S. Abatement, Inc., and Asbestos Workers Local Union #8, effective August 24, 1987, through July 1, 1989.

4. All mechanics, apprentices, and other persons performing work similar to that performed by mechanics and apprentices, constituted an appropriate unit of Respondent's employees for the purpose of collective bargaining under the Act.

5. By repudiating its 1987–1989 collective-bargaining agreement with the Union and withdrawing recognition from the Union during the term of the collective-bargaining agreement, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By failing to make contractually required fringe benefit contributions for its employees to the Union's health and welfare, pension, and apprenticeship funds, and by failing to pay contractual wage rates, all during the term of a valid collective-bargaining agreement under Section 8(f) of the Act, Respondent violated Section 8(a)(5) and (1) of the Act.

7. By refusing during the term of its 1987–1989 collective-bargaining agreement with the Union, to supply the Union, on request, relevant information required under the terms of the collective-bargaining agreement and necessary for it to administer the collective-bargaining agreement properly, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

8. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, I find that the Respondent must be ordered to cease and desist and to take certain affirmative action to effectuate the policies of the Act.

Respondent, having engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, shall be ordered to cease and desist from engaging in these unfair labor practices.

Respondent, having failed to bargain collectively and in good faith with the Union by unilaterally ceasing to make contractually required contributions on behalf of the unit employees to the Union's health and welfare fund, pension fund, and apprenticeship fund, for the period from August 24, 1987, through July 1, 1989, shall make whole the unit employees by making contributions on their behalf to the Union's said funds, for the period from August 24, 1987, through July 1, 1989, and by reimbursing them for expenses incurred due to the failure to make such contributions in accord with *Kraft Plumbing & Heating*, 252 NLRB 891 (1980).

Respondent, by failing to pay bargaining unit employees contractually established wage rates, during the period from August 24, 1987, through July 1, 1989, shall make the employees whole, as prescribed in *Ogle Protection Service*, 183 NLRB 689 (1970), for any losses they may have suffered as a result of the Respondent's failure to adhere to the contract since August 24, 1987, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[22]

Respondent, having refused to timely furnish requested relevant information to the Union, shall furnish to the Union the information requested in the Union's letter of April 4, 1988, to the Respondent.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, U.S. Abatement, Inc., Hamilton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to supply the Union, on request, relevant information required under the terms of the 1987–1989 collective-bargaining agreement with the Union and necessary for the Union to administer the collective-bargaining agreement properly.

(b) Refusing to bargain collectively with the Union by failing and refusing, without the consent of the Union, to make contractually required payments on behalf of its employees to the Union's health and welfare fund, pension fund, and apprenticeship fund for the period from August 24, 1987, through July 1, 1989.

(c) Refusing to adhere to any other terms of its 1987–1989 collective-bargaining agreement with the Union, including those provisions concerning rates of pay, during the period from August 24, 1987, through July 1, 1989.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the information which it requested in its letter of April 4, 1988.

(b) Pay all delinquent contributions to the Union's health and welfare fund, pension fund, and apprenticeship fund, for the period from August 24, 1987, to July 1, 1989.

(c) Make whole its employees, in the manner set forth in the remedy section of this decision, for any losses they may have suffered as a result of the Respondent's failure to adhere to its collective-bargaining agreement with the Union from August 24, 1987, until it expired on July 1, 1989.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Hamilton, Ohio, and at any other facilities it may operate, copies of the attached notice marked ''Appendix.''[24] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[22] In accordance with the Board's decision in *New Horizons for the Retarded*, supra, interest on and after January 1, 1987, shall be computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 622.

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[24] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT, during the term of a collective-bargaining agreement, repudiate that agreement and withdraw recognition from the International Association of Heat and Frost Insulators and Asbestos Workers, Local Union #8, AFL–CIO, as the exclusive collective-bargaining representative of our employees covered by the agreement.

WE WILL NOT refuse to bargain collectively with the International Association of Heat and frost Insulators and Asbestos Workers, Local Union #8, AFL–CIO, as the exclusive

collective-bargaining representative of our employees in the appropriate unit, by failing and refusing, upon request, to timely furnish it with relevant information reasonably necessary to the administration of the agreement.

WE WILL NOT fail to pay wage rates established in a collective-bargaining agreement between us and the Union.

WE WILL NOT fail to make contractually required contributions to the Union's fringe benefit funds on behalf of all our employed covered by a collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our employees, the Union, and the fringe benefit funds for any losses they may have suffered as a result of our failure to comply with our collective-bargaining agreement with the Union, from August 24, 1987, until the expiration of the agreement on July 1, 1989.

WE WILL comply with the terms of our collective-bargaining agreement with the Union in effect from August 24, 1987, to July 1, 1989.

U.S. ABATEMENT, INC.